

By: Lucio

S.B. No. 939

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to creating an offense for engaging in certain conduct  
3 relating to cockfighting and to the criminal and civil consequences  
4 of committing that offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 42, Penal Code, is amended by adding  
7 Section 42.105 to read as follows:

8 Sec. 42.105. COCKFIGHTING. (a) In this section:

9 (1) "Cock" means the male of any type of domestic fowl.

10 (2) "Cockfighting" means any situation in which one  
11 cock attacks or fights with another cock.

12 (3) "Gaff" means an artificial steel spur designed to  
13 attach to the leg of a cock to replace or supplement the cock's  
14 natural spur.

15 (4) "Slasher" means a steel weapon resembling a curved  
16 knife blade designed to attach to the foot of a cock.

17 (b) A person commits an offense if the person knowingly:

18 (1) causes a cock to fight with another cock;

19 (2) participates in the earnings of or operates a  
20 facility used for cockfighting;

21 (3) uses or permits another to use any real estate,  
22 building, room, tent, arena, or other property for cockfighting;

23 (4) owns or trains a cock with the intent that the cock  
24 be used in an exhibition of cockfighting;

1           (5) manufactures, buys, sells, barter, exchanges,  
2 possesses, advertises, or otherwise offers a gaff, slasher, or  
3 other sharp implement designed for attachment to a cock with the  
4 intent that the implement be used in cockfighting; or

5           (6) attends as a spectator an exhibition of  
6 cockfighting.

7           (c) A person may be convicted under Subsection (b)(2) or (3)  
8 on the basis of uncorroborated testimony of a party to the offense.

9           (d) An offense under Subsection (b)(1), (2), (3), or (5) is  
10 a state jail felony. An offense under Subsection (b)(4) is a Class  
11 A misdemeanor. An offense under Subsection (b)(6) is a Class C  
12 misdemeanor, except that the offense is a Class A misdemeanor if it  
13 is shown on the trial of the offense that the person has been  
14 previously convicted of an offense under that subdivision.

15           SECTION 2. Section 71.02(a), Penal Code, as amended by  
16 Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554),  
17 Acts of the 81st Legislature, Regular Session, 2009, is reenacted  
18 and amended to read as follows:

19           (a) A person commits an offense if, with the intent to  
20 establish, maintain, or participate in a combination or in the  
21 profits of a combination or as a member of a criminal street gang,  
22 the person commits or conspires to commit one or more of the  
23 following:

24           (1) murder, capital murder, arson, aggravated  
25 robbery, robbery, burglary, theft, aggravated kidnapping,  
26 kidnapping, aggravated assault, aggravated sexual assault, sexual  
27 assault, forgery, deadly conduct, assault punishable as a Class A

1 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
2 motor vehicle;

3 (2) any gambling offense punishable as a Class A  
4 misdemeanor;

5 (3) promotion of prostitution, aggravated promotion  
6 of prostitution, or compelling prostitution;

7 (4) unlawful manufacture, transportation, repair, or  
8 sale of firearms or prohibited weapons;

9 (5) unlawful manufacture, delivery, dispensation, or  
10 distribution of a controlled substance or dangerous drug, or  
11 unlawful possession of a controlled substance or dangerous drug  
12 through forgery, fraud, misrepresentation, or deception;

13 (6) any unlawful wholesale promotion or possession of  
14 any obscene material or obscene device with the intent to wholesale  
15 promote the same;

16 (7) any offense under Subchapter B, Chapter 43,  
17 depicting or involving conduct by or directed toward a child  
18 younger than 18 years of age;

19 (8) any felony offense under Chapter 32;

20 (9) any offense under Chapter 36;

21 (10) any offense under Chapter 34 or 35;

22 (11) any offense under Section 37.11(a);

23 (12) any offense under Chapter 20A;

24 (13) any offense under Section 37.10; [~~or~~]

25 (14) any offense under Section 38.06, 38.07, 38.09, or  
26 38.11;

27 (15) [~~(14)~~] any offense under Section 42.10;

1           (16) [~~14~~] any offense under Section 46.06(a)(1) or  
2 46.14; or

3           (17) any offense under Section 42.105.

4           SECTION 3. Articles 18.18(a), (b), (e), (f), and (g), Code  
5 of Criminal Procedure, are amended to read as follows:

6           (a) Following the final conviction of a person for  
7 possession of a gambling device or equipment, altered gambling  
8 equipment, or gambling paraphernalia, for an offense involving a  
9 criminal instrument, for an offense involving an obscene device or  
10 material, for an offense involving child pornography, or for an  
11 offense involving a scanning device or re-encoder, the court  
12 entering the judgment of conviction shall order that the machine,  
13 device, gambling equipment or gambling paraphernalia, instrument,  
14 obscene device or material, child pornography, or scanning device  
15 or re-encoder be destroyed or forfeited to the state. Not later  
16 than the 30th day after the final conviction of a person for an  
17 offense involving a prohibited weapon, the court entering the  
18 judgment of conviction on its own motion, on the motion of the  
19 prosecuting attorney in the case, or on the motion of the law  
20 enforcement agency initiating the complaint on notice to the  
21 prosecuting attorney in the case if the prosecutor fails to move for  
22 the order shall order that the prohibited weapon be destroyed or  
23 forfeited to the law enforcement agency that initiated the  
24 complaint. If the court fails to enter the order within the time  
25 required by this subsection, any magistrate in the county in which  
26 the offense occurred may enter the order. Following the final  
27 conviction of a person for an offense involving dog fighting or

1 cockfighting, the court entering the judgment of conviction shall  
2 order that any dog-fighting or cockfighting equipment be destroyed  
3 or forfeited to the state. Destruction of dogs and cocks, if  
4 necessary, must be carried out by a veterinarian licensed in this  
5 state or, if one is not available, by trained personnel of a humane  
6 society or an animal shelter. If forfeited, the court shall order  
7 the contraband delivered to the state, any political subdivision of  
8 the state, or to any state institution or agency. If gambling  
9 proceeds were seized, the court shall order them forfeited to the  
10 state and shall transmit them to the grand jury of the county in  
11 which they were seized for use in investigating alleged violations  
12 of the Penal Code, or to the state, any political subdivision of the  
13 state, or to any state institution or agency.

14 (b) If there is no prosecution or conviction following  
15 seizure, the magistrate to whom the return was made shall notify in  
16 writing the person found in possession of the alleged gambling  
17 device or equipment, altered gambling equipment or gambling  
18 paraphernalia, gambling proceeds, prohibited weapon, obscene  
19 device or material, child pornography, scanning device or  
20 re-encoder, criminal instrument, or dog-fighting or cockfighting  
21 equipment to show cause why the property seized should not be  
22 destroyed or the proceeds forfeited. The magistrate, on the motion  
23 of the law enforcement agency seizing a prohibited weapon, shall  
24 order the weapon destroyed or forfeited to the law enforcement  
25 agency seizing the weapon, unless a person shows cause as to why the  
26 prohibited weapon should not be destroyed or forfeited. A law  
27 enforcement agency shall make a motion under this section in a

1 timely manner after the time at which the agency is informed in  
2 writing by the attorney representing the state that no prosecution  
3 will arise from the seizure.

4 (e) Any person interested in the alleged gambling device or  
5 equipment, altered gambling equipment or gambling paraphernalia,  
6 gambling proceeds, prohibited weapon, obscene device or material,  
7 child pornography, scanning device or re-encoder, criminal  
8 instrument, or dog-fighting or cockfighting equipment seized must  
9 appear before the magistrate on the 20th day following the date the  
10 notice was mailed or posted. Failure to timely appear forfeits any  
11 interest the person may have in the property or proceeds seized, and  
12 no person after failing to timely appear may contest destruction or  
13 forfeiture.

14 (f) If a person timely appears to show cause why the  
15 property or proceeds should not be destroyed or forfeited, the  
16 magistrate shall conduct a hearing on the issue and determine the  
17 nature of property or proceeds and the person's interest therein.  
18 Unless the person proves by a preponderance of the evidence that the  
19 property or proceeds is not gambling equipment, altered gambling  
20 equipment, gambling paraphernalia, gambling device, gambling  
21 proceeds, prohibited weapon, obscene device or material, child  
22 pornography, criminal instrument, scanning device or re-encoder,  
23 or dog-fighting or cockfighting equipment and that he is entitled  
24 to possession, the magistrate shall dispose of the property or  
25 proceeds in accordance with Paragraph (a) of this article.

26 (g) For purposes of this article:

27 (1) "criminal instrument" has the meaning assigned by

1 ~~[defined in]~~ the Penal Code;

2 (2) "gambling device or equipment, altered gambling  
3 equipment or gambling paraphernalia" has the meaning assigned by  
4 ~~[defined in]~~ the Penal Code;

5 (3) "prohibited weapon" has the meaning assigned by  
6 ~~[defined in]~~ the Penal Code;

7 (4) "dog-fighting equipment" means:

8 (A) equipment used for training or handling a  
9 fighting dog, including a harness, treadmill, cage, decoy, pen,  
10 house for keeping a fighting dog, feeding apparatus, or training  
11 pen;

12 (B) equipment used for transporting a fighting  
13 dog, including any automobile, or other vehicle, and its  
14 appurtenances that ~~[which]~~ are intended to be used as a vehicle for  
15 transporting a fighting dog;

16 (C) equipment used to promote or advertise an  
17 exhibition of dog fighting, including a printing press or similar  
18 equipment, paper, ink, or photography equipment; or

19 (D) a dog trained, being trained, or intended to  
20 be used to fight with another dog;

21 (4-a) "cockfighting equipment" means:

22 (A) equipment used for training or handling a  
23 fighting cock, including a cage, decoy, gaff, slasher, pen, house  
24 for keeping a fighting cock, feeding apparatus, or training pen;

25 (B) equipment used for transporting a fighting  
26 cock, including any automobile or other vehicle and its  
27 appurtenances that are intended to be used as a vehicle for

1 transporting a fighting cock;

2 (C) equipment used to promote or advertise an  
3 exhibition of cockfighting, including a printing press or similar  
4 equipment, paper, ink, or photography equipment; or

5 (D) a cock trained, being trained, or intended to  
6 be used to fight with another cock;

7 (4-b) "gaff" and "slasher" have the meanings assigned  
8 by Section 42.105, Penal Code;

9 (5) "obscene device" and "obscene" have the meanings  
10 assigned by Section 43.21, Penal Code;

11 (6) "re-encoder" has the meaning assigned by Section  
12 522.001, Business & Commerce Code;

13 (7) "scanning device" has the meaning assigned by  
14 Section 522.001, Business & Commerce Code; and

15 (8) "obscene material" and "child pornography"  
16 include digital images and the media and equipment on which those  
17 images are stored.

18 SECTION 4. Article 59.01(2), Code of Criminal Procedure, as  
19 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357  
20 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is  
21 reenacted and amended to read as follows:

22 (2) "Contraband" means property of any nature,  
23 including real, personal, tangible, or intangible, that is:

24 (A) used in the commission of:

25 (i) any first or second degree felony under  
26 the Penal Code;

27 (ii) any felony under Section 15.031(b),

1 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
2 31, 32, 33, 33A, or 35, Penal Code;

3 (iii) any felony under The Securities Act  
4 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

5 (iv) any offense under Chapter 49, Penal  
6 Code, that is punishable as a felony of the third degree or state  
7 jail felony, if the defendant has been previously convicted three  
8 times of an offense under that chapter;

9 (B) used or intended to be used in the commission  
10 of:

11 (i) any felony under Chapter 481, Health  
12 and Safety Code (Texas Controlled Substances Act);

13 (ii) any felony under Chapter 483, Health  
14 and Safety Code;

15 (iii) a felony under Chapter 153, Finance  
16 Code;

17 (iv) any felony under Chapter 34, Penal  
18 Code;

19 (v) a Class A misdemeanor under Subchapter  
20 B, Chapter 365, Health and Safety Code, if the defendant has been  
21 previously convicted twice of an offense under that subchapter;

22 (vi) any felony under Chapter 152, Finance  
23 Code;

24 (vii) any felony under Chapter 32, Human  
25 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
26 involves the state Medicaid program;

27 (viii) a Class B misdemeanor under Chapter

1 522, Business & Commerce Code;

2 (ix) a Class A misdemeanor under Section  
3 306.051, Business & Commerce Code; ~~[or]~~

4 (x) any offense under Section 42.10, Penal  
5 Code;

6 (xi) ~~[(x)]~~ any offense under Section  
7 46.06(a)(1) or 46.14, Penal Code;

8 (xii) ~~[(x)]~~ any offense under Chapter 71,  
9 Penal Code; or

10 (xiii) any offense under Section 42.105,  
11 Penal Code;

12 (C) the proceeds gained from the commission of a  
13 felony listed in Paragraph (A) or (B) of this subdivision, a  
14 misdemeanor listed in Paragraph (B)(viii), (x), (xi), (xii), or  
15 (xiii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of  
16 violence;

17 (D) acquired with proceeds gained from the  
18 commission of a felony listed in Paragraph (A) or (B) of this  
19 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),  
20 (xi), (xii), or (xiii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a  
21 crime of violence; or

22 (E) used to facilitate or intended to be used to  
23 facilitate the commission of a felony under Section 15.031 or  
24 43.25, Penal Code.

25 SECTION 5. Chapter 59, Code of Criminal Procedure, is  
26 amended by adding Article 59.012 to read as follows:

27 Art. 59.012. COCKFIGHTING CONTRABAND. If property

1 described by Article 59.01(2)(B)(xiii) is subject to forfeiture  
2 under this chapter and Article 18.18, the attorney representing the  
3 state may proceed under either provision.

4 SECTION 6. To the extent of any conflict, this Act prevails  
5 over another Act of the 82nd Legislature, Regular Session, 2011,  
6 relating to nonsubstantive additions to and corrections in enacted  
7 codes.

8 SECTION 7. The changes in law made by this Act apply only to  
9 an offense committed on or after the effective date of this Act or  
10 to the forfeiture of property used in the commission of that  
11 offense. An offense committed before the effective date of this  
12 Act, or the forfeiture of property used in the commission of that  
13 offense, is governed by the law in effect when the offense was  
14 committed, and the former law is continued in effect for that  
15 purpose. For purposes of this section, an offense was committed  
16 before the effective date of this Act if any element of the offense  
17 occurred before that date.

18 SECTION 8. This Act takes effect September 1, 2011.